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MONTANA LEGISLATIVE HISTORY

Chapter 79 19 89

Bill H 178 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 20	✓ C	Hearing Date(s)	Mar 01	✓ C
	Jan 24	✓ C			C
	Jan 25	✓ C			C
		C			C
Date Out	Jan 25	✓ C		Mar 01	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/13	INTRODUCED		
1/14	REFERRED TO JUDICIARY		
1/16	FISCAL NOTE REQUESTED		
1/20	HEARING		
1/21	FISCAL NOTE RECEIVED		
1/25	TABLED IN COMMITTEE		
2/03	TAKEN FROM THE TABLE BY COMMITTEE		
2/06	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/07	FISCAL NOTE PRINTED		
2/08	2ND READING PASSED	80	14
2/10	3RD READING PASSED	89	3
	TRANSMITTED TO SENATE		
2/11	REFERRED TO JUDICIARY		
3/02	HEARING		
3/06	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/07	2ND READING CONCURRED	50	0
3/09	3RD READING CONCURRED	47	3
	RETURNED TO HOUSE WITH AMENDMENTS		
3/11	2ND READING AMENDMENTS CONCURRED	88	0
3/13	3RD READING AMENDMENTS CONCURRED	96	0
3/17	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/18	TRANSMITTED TO GOVERNOR		
3/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 262 EFFECTIVE DATE: 1/01/90		

HB 178 INTRODUCED BY CODY
CLARIFY LAW MANDATING REPORTS OF SUSPECTED CHILD ABUSE AND NEGLECT

1/13	INTRODUCED		
1/14	REFERRED TO JUDICIARY		
1/20	HEARING		
1/25	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	95	0
1/31	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/02	REFERRED TO JUDICIARY		
3/01	HEARING		
3/02	COMMITTEE REPORT--BILL CONCURRED		
3/03	2ND READING CONCURRED	48	0
3/06	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/09	SIGNED BY SPEAKER		
3/09	SIGNED BY PRESIDENT		
3/09	TRANSMITTED TO GOVERNOR		
3/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 79 EFFECTIVE DATE: 10/01/89		

HB 179 INTRODUCED BY LEE, ET AL.
REMOVE 2-YEAR LIMIT ON MODIFICATION OF DISSOLUTION, SEPARATION DECREE

1/14	INTRODUCED		

Questions From Committee Members: Rep. Addy questioned Rep. Ellison as to data indicating how many awards and in what amount of punitive damages were made statewide. Rep. Ellison deferred the question to Mr. Morris who stated that MACO was also concerned with that same question. Unfortunately, those records are not in one central place and they have not had the chance to actually go out and survey on the basis of separate judicial districts.

Rep. Addy asked Mr. Sherwood if he was aware of any surveys that have been conducted concerning awards of punitive damages. Mr. Sherwood stated that the only statewide jury survey of which he was aware of was the State Bar jury survey which was on medical malpractice premiums. It is difficult at this point because they do not have a computerized court system to get that information.

Rep. Knapp asked what role do lawyers have financially in punitive damages? When a punitive damage is awarded, what percentage, if any, do lawyers get? Mr. Sherwood responded that it depends upon the nature of the case. Some lawyers are paid by the hour, in which he has no interest in the punitive damages, and some may get a percentage. Additionally, costs are not necessarily always recovered.

Closing by Sponsor: Rep. Ellison stated that he has met with his constituents and they tell him that there is clearly a problem in the area of punitive damages. By introducing this bill he has merely brought the problem to the attention of the committee. He feels the bill can be amended to take care of the concerns of the opponents and that maybe the committee would see it fit to assign a subcommittee.

HEARING ON HOUSE BILL 178

Presentation and Opening Statement by Sponsor:

Rep. Dorothy Cody, House District 20 submitted to the committee proposed amendments to HB 178 (EXHIBIT 16). She addressed the amendments and then presented her testimony (EXHIBIT 17) and pointed out that Section 41-32-03, which is not provided in this bill provides immunity only if the person or professional who is making the report is not acting in bad faith or with malicious purpose.

Testifying Proponents and Who They Represent:

John Madsen, Department of Family Services
Steve Waldron, Montana Council of Mental Health Centers
Kathleen Hayden, Montana National Association of Social Workers
Fay Dozier, Reed Point, Montana

Proponent Testimony:

John Madsen stated that the Dept. of Family Services is in support of this bill with Rep. Cody's proposed amendments.

Steve Waldron commented that they too support the bill with the proposed amendments. Mental health professionals have indicated to him that they need to have some clear direction of what they are suppose to do, and the amendments will clarify that so they can report the abuse and be immune from suit because they have reached confidentiality. They should also understand that it is not a public declaration. The professional notifies the Dept. of Family Services and a social worker investigates and determines as to whether or not the allegation is accurate. It may or may not end up in the court system. The professionals have been emphasizing strongly that this law is designed to protect children. It is a civil matter as far as this law is concerned, although the individual who is the perforator may end up in a criminal proceeding. The intent of this is to insure that children who are abused get help and if necessary get them into some services or help in order to deal with that abuse.

Kathleen Hayden stated that with her practice she frequently hears about abuse with whom she is working with or other abuse outside of that family. With the proposed amendments and legislation it would allow her to report this information to the Dept. of Family Services. What they do know about offenders and about abuse, both sexual and physical, is that once they have abused it is very, very likely that they will continue to abuse without treatment. And treatment is long and extensive and perforators seldom turn themselves in. Ms. Hayden stated that 75-80% of the women on her caseload have been sexually abused and many of them physically and emotionally abused as well. The reason she is representing NASW as well as herself is because she feels very strongly about this bill. The scars and devastation that this leaves with the victim is life long and is not easily healed. It takes a tremendous amount of courage, patience and determination to recover from this kind of victimization. HB 178 offers a great deal of protection for abused children and gives them the opportunity to grow up without fearing the adults who are around them. Moreover, it will allow them to see themselves as respectable and loveable human beings.

Fay Dozier testified in strong support of HB 178 as a survivor of childhood sexual abuse. She was sexually molested from the time she was five years old until the time she ran away from home at the age of eighteen. Additionally, she was severely physically, emotionally, and verbally abused. Her childhood was filled with constant fear, pain and shame. She felt dirty and responsible as a result of the sexual abuse. She grew up being told that she was no good, a slut and a whore.

Basically, she lived emotionally isolated from the rest of the world because of the secret she had to keep. Her brothers and sisters were turned against her and she felt alone. Instinctively she knew that what was happening to her was wrong, but had no where to turn for help. She grew up in a time when the family unit was considered sacred and no one wanted to be involved in family matters. She told her mother when she was thirteen and was severely beaten for telling. She told a friend when she was fifteen and lost her friendship. She told a male family member when she was sixteen and was raped by him for her efforts. Finally, when she was eighteen she knew legally she could leave home and they couldn't force her to go back. She still had a year and a half of high school left and was placed in a foster home. She tried to get her molester prosecuted when she was eighteen because she knew he was molesting at least one of her four sisters. The authorities told her that because she was no longer a minor, there was nothing they could do. She spent from 18 to 30 years old living a very self destructive, very emotionally disturbed life. She abused alcohol, was suicidal, was very promiscuous, had two failed marriages, two miscarriages, two abortions and physically and emotionally abused her own son. Mrs. Dozier stated that she later learned that her behavior and her problems were common in sexually abused victims. She sought therapy throughout those years but the therapists were not willing to credit her emotional and mental problems to the sexual abuse. Of course, that was many years ago, and this crime has only recently been brought out of the closet. As a result of their denial, she started believing that she was crazy and that a normal life was hopeless. At age 30 she finally hit bottom and was encouraged by her husband to try one more time to get help. She was able to find a therapist who treated adult female sexual abuse victims. For the first time in her life she felt validated, that she was not so alone. Her recovery was a long painful and costly process. She still feels the pain and bears the scars, and she always will. She still struggles with depression and liking herself. She finds trusting people very difficult. Mrs. Dozier commented that her four sisters were all sexually molested, as well as a step sister and a two year old half-sister. Had society not been so ignorant regarding this devastating crime perhaps these individuals wouldn't be suffering today . . . and they are suffering. She feels that if there had been a law such as HB 178 at the time she was molested and later when she was seeking help, her abuser might have been stopped and maybe so many lives would not have been so destroyed. She stated that her abuser was finally prosecuted for molesting her step-sister, but he received a slap on the wrist and is still running loose. Mrs. Dozier expressed that if men like him knew there were severe consequences for their actions, perhaps they would think twice before they violated another innocent child.

Testifying Opponents and Who They Represent:

Bryan Asay, Montana Family Coalition
Doug Kelley, Pastor, Mt. Helena Community Church

Opponent Testimony:

Bryan Asay stated that the Montana Family Coalition initially stood in strong opposition to sub-section 3B. Since that section was amended out of the bill their opposition was dramatically decreased. They additionally have concern with the addition of sub-section 1 of the word "made". If there is going to be a report made, that report should be based on personal knowledge and not necessarily just hearsay, be it a strong or weak nature or innuendo or gossip or any other such form of information. A man and his family can be destroyed very quickly by the suggestion of sexual abuse. They are concerned with the possibilities that gossip or hearsay could be the foundation for an investigation on a criminal action for sexual or child abuse. He urged the committee to seriously consider that concept before taking action on the bill.

Pastor Doug Kelley, also appearing in opposition to sub-section 3B submitted written testimony (EXHIBIT 18) and expressed that his biggest concern is with the allegations that would effect the family.

Questions From Committee Members: Rep. Boharski questioned how the word "made" could change their professional capacity. Apparently, before this change someone, for example, a social worker or a mental health counselor who hears about an abuse case could not report it. Rep. Cody stated that if a social worker or a mental health counselor did in fact make a report, they could be subject to liability under the current law.

Rep. Boharski, referring to the way the bill is now phrased, understands that a counselor now has a statutory obligation to report any hearsay case. If they choose not to they are possibly open to a lawsuit for not making a report. Steve Waldron stated that inserting the word "made" into the bill clarifies what the intent of the law was meant to be. As far as there being a responsibility to report, mental health professionals don't have a problem with that. They don't want to have to make any sort of judgment calls and be open to liability. The child protective service worker doesn't go issue a press release whenever they get a report to do an investigation. Mr. Waldron submitted an abuse case of Gross vs. Myers (EXHIBIT 19) where the therapist happened to be treating the mother of the family and she disclosed that the father had abused the children. What they would like to do is insert into the statutes so that when mental health professionals are in a situation such as this they are

protected.

Rep. Addy stated that he has some problems with this bill because if it passes, no one who is an abuser would ever disclose that fact to someone who can treat them for their condition. Mr. Waldron replied that abusers, particularly sexual abusers don't go in for treatment willingly. It is extremely rare that they do. Sexual offenders generally do not go into treatment until they are caught. That is not to say that offenders cannot be treated. Often time they can, but it's almost always only after they have been caught and there has been some court action taken. They have been found guilty and they are forced into treatment. Mr. Waldron noted, however, that the problem is never cured.

Rep. Addy suggested they amend subsection 4, page 2 so that it reads "no person listed in sub-section 2 may refuse to make a report as required in this section on the grounds of physician/patient or similar privileges unless the person came into possession with such information as a result of his treatment of the alleged abuser". That would protect the confidentiality between the person who is in need of treatment and encourage them to seek treatment, and at the same time would allow or require the professional to report all other instances. Rep. Waldron asked for clarification. Rep. Addy stated that the therapist may refuse to file a report if the information comes from the offender as a result of the patient/physician privilege. Mr. Waldron commented that he would have some serious problems with that because most offenders have offended numerous times before they are caught, and does not see that they would be protecting the children. What good would this do if an offender admitted to child abuse and the therapist could not report it to the Dept. of Family Services?

Rep. Addy stated that he had an additional area of inquiry. He believes that there is an exception to all doctrines of privilege where the professional is made aware as a result of the communication of future criminal conduct by the person making the disclosure. If someone went to his therapist or mental health professional and talked of a crime that they were about to commit, that mental health professional would have a duty to maintain confidentiality of that information? Mr. Waldron replied that they have a duty to warn the law that specifically lays out the requirements of a mental health professional when that situation occurs. That is what they would like to have in this law. It specifically lays out what their duties are while continuing to insure the protection of the children.

Rep. Addy stated that the whole point of this bill then is to insure anybody who is in treatment and discloses the grounds for their need for treatment to the professional, that the professional will disclose it, therefore discouraging anybody else from ever going in for treatment and fully

stating their grounds. Rep. Cody commented that she hoped the committee would take into consideration the Supreme Court ruling of Gross vs. Myers. The reading in that particular ruling really addresses what they are trying to accomplish with this law. They are putting social workers in very precarious positions if they don't change the law because what they are saying is that they are mandated to report, but then on the other hand, part of the law is saying they can't report because of the client/patient confidentiality. The ambiguity is there and that is what needs to be addressed.

Rep. Addy commented that he wants to have it both ways. He wants to protect the rights of the offender as well as the abused. If the offender realizes that they need treatment, he wants them to feel like they can go in and tell someone that they have a problem and they need treatment. He doesn't want them to feel that they are isolated, that they are alone, that there is nothing that they can do about their problem. He feels that unless they adopt the amendment that he proposed in sub-section 4 they will be making it worse rather than better. Rep. Cody stated that in Rep. Addy's concern for the offender, they are also leaving the child continually open. Whether the offender is going to be rehabilitated or not is questionable because the statistics show that the records show the recovery rate is not real high. So what the amendment says, is that if the counselor feels that this action by the offender is going to continue then he can report it. If the offender enters treatment on a voluntary basis, then the counselor cannot file a report. That too is ambiguous and sets into place several different angles.

Rep. Aafedt asked if a false report was made and it came down to one party's word against the other, how would they resolve that matter and know what to believe. John Madsen stated that when the Dept. of Family Services receives a report of child abuse or child sexual abuse, it depends on the circumstances and the age of the child. For example, if a 13 year old girl reported to her school teacher that she was being sexually abused, in that particular case the general practice would to be to go and speak with the child. They would do an interview with the child in private. In the course of the interview they would want the child to be very specific in terms of when it happened, how it happened and what did the person do. Once they make the interview, they would then determine if they have reason to proceed with the investigation. In all cases, they would then contact the parent and a decision would be made.

Closing by Sponsor: Rep. Cody stated that she has struggled with this bill herself over a period of time and the issue of child abuse is really difficult to understand. She feels, however, that in the overall perspective that what they have to look at here is the children, and they should be the

primary consideration. Truthfully speaking, families have their ups and downs, but a good cohesive loving family should have nothing to fear. Even if there is an inaccurate or false report made, this bill does not have anything to do with law enforcement, it just allows the report to be made and for the investigation to happen. If you come from a good loving family and are having a little bit of a tough time with one of the children and something comes out of that, she believes the truth will always prevail. Rep. Cody stated that the importance of this legislation is that it takes the children into consideration. The young lady who spoke on her past experiences told how many people what was happening to her and what was the result of that. That is where the inequity has been. HB 178 cleans that up and allows those mental health professionals to report their knowledge of abuse either directly or indirectly.

ADJOURNMENT

Adjournment At: 10:40 a.m.

REP. DAVE BROWN, Chairman

DB/je

1708.min

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 20, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD			X
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

CS-30

EXHIBIT 16
DATE 1-20-89
HB 178- Rep. Cody

AMENDMENTS TO HB 178

1. Page 2, line 13.
   Following: "(3)"
   Strike: "(a)"

2. Page 2, line 16.
   Strike: subsection (b) in its entirety

3. Page 2, lines 22 through 24.
   Following: "privilege" on line 22
   Strike: remainder of line 22 through line 24

EXHIBIT 1
1-20-89
HB178 - Rep. Cody

Mr. Chairman and Members of the Committee, for the record, my name is Dorothy Cody, Representative of House District 20, Wolf Point and Poplar,

I am bringing to you today HB 178 and before I begin, I would like to include some simple amendments that are needed in the Bill. (Go over amendments)

Section 1, Sub 2, lists all those Professionals who are required to report suspected Child Abuse or neglect.

There has been confusion, particularly among Mental Health Professionals, over the interpretation of this Statute. First there is the question of whether a "Child known to them in their Professional or official capacity" means a direct or an indirect knowledge of the allegedly abused or neglected child. Inserting the word "made" on PAGE !, Line 14 clarifies this issue.

On page 2, Sub 4, lines 20 through 24, seems to contradict the intention of Page 1, Sub 1, lines 14 and 15 that a child known to the Professional in their official capacity must be reported if there is suspected abuse. Sub 4 contradicts that section by stating that a Mental Health Professional must breach confidentiality only if the information comes from the child in treatment. Mental Health Professionals often gain knowledge of child abuse, particularly child sexual abuse, from another family member who is in therapy. The question is "Do they have to report and are they required to breach confidentiality law when the information comes from another person?"

EXHIBIT 17
DATE 1-20-89
HB178- Rep. Cody

The Montana Supreme Court partially answered the question in a ruling on December 30, 1987 in Gross vs. Meyers which indicated that there should be a broad interpretation of this statute in providing immunity to mental health professionals who report under this statute.

Mental health professionals, in turn, want the statute written clearly so that their duties under this law are obvious. However, the bill as written does not provide this intended clarity. In addition, the permissive language on page 2, lines 16 through 19 places federal child abuse grant funds in jeopardy.

I have had prepared some amendments which clearly delineate the duties of the professionals under this statute. Please consider adopting the amendments.

These amendments take into account the Gross vs. Meyers decision. In addition, the amendments clearly denote the responsibilities of the professionals who are required to report and clearly note that other confidentiality statutes do not apply for those with a physician-patient or similar privilege such as mental health professionals.

In closing, I would like to point out that section 41-3-203, which is not included in this bill, provides immunity only if the person or professional who is making the report is not acting in bad faith or with malicious purpose.

Thank you for your consideration of this legislation.

EXHIBIT 18
DATE 1-20-89
HB 178 - Rep. Cody

Mt Helena Community Church

710 Linden • Helena, MT 59601

Kelley

(o)
(r)

Christian Academy
Training Institute
Children's Church
Missionaries
Worship & Drama

January 19, 1989

Representative Dave Brown
Chairman, House Judiciary Committee
Capitol Building
Helena, Montana 59620

Re: House Bill 178

Dear Chairman Brown:

I recently had an opportunity to review HB 178, which is entitled "An Act Clarifying the Law Mandating the Reporting of Suspected Child Abuse or Neglect." As a representative of a great many evangelical pastors and churches across the State of Montana, I urge the Judiciary Committee to either vote against the bill as presently written or amend the bill to delete the words, "or similar relationship."

As the bill presently reads, it seems to take away the confidential nature of the relationship presently enjoyed by pastors, lawyers, doctors and other professionals. It would cause people to be extremely reluctant in receiving the help that they need to receive.

I believe that one of the oldest and most important relationships is the relationship between a parishioner and his priest. This bill attempts to come between the parishioner and the priest and encourage the propagation of hearsay and gossip. While the climb of child abuse cannot and should not be tolerated, we cannot see a total breakdown of the trust, peace and harmony of the Montana family.

Thank you for your consideration in this matter.

Sincerely yours,

Douglas B. Kelley
DBK:ck

EXHIBIT 19
DATE 1-20-89
HB 178-Rep. Cody

No. 87-107

IN THE SUPREME COURT OF THE STATE OF MONTANA

1987

JOYCE GROSS,

Plaintiff and Appellant,

-vs-

BARBARA MYERS,

Defendant and Respondent.

APPEAL FROM: District Court of the Eleventh Judicial District, In and for the County of Flathead, The Honorable Michael Keedy, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

Don Vernay argued, Big Fork, Montana

For Respondent:

Warden, Christiansen, Johnson & Berg; Thomas R. Bostock argued, Kalispell, Montana

Submitted: October 6, 1987

Decided: December 30, 1987

Filed:

Ethel M. Harrison

Clerk

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. HOUSE BILL 178 DATE JAN. 20, 1989

SPONSOR REP. CODY

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Madsen	Family Services	X	
Doug Kelley	1330 Le Grande Helena		X
Bryan Hamm	720 Laurel Helena		X
Marc Cramer	HELENA, MT		X
Judith Carlson	HELENA	X	
Steve Waldron	Helena	X	
Kathleen Hayden	Helena	X	
Tom Nikles	Helena	X	
Jay Dozier	Reedpoint	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

doctors but was of concern, is that they didn't think it would be fair to add other people into their particular group since they paid all of the start up costs. More importantly, there is really not a very good relationship between chiropractors and physicians. To allow the chiropractors to serve on their panel would be unfair to the physicians. Additionally, where is this chiropractic crisis? Rep. Mercer stated that he feels that there is not a crises and thinks it is unfair to take a non-existent crisis and use it as justification to cram chiropractors down the physicians throat.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Rep. Addy made a substitute motion to TABLE HB 177. Motion was seconded by Rep. Mercer. A Roll Call Vote was taken and CARRIED with 9 voting aye and 8 voting nay.

DISPOSITION OF HOUSE BILL 98

Motion: Rep. Gould made a DO PASS motion, seconded by Rep. Boharski.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A Roll Call Vote was taken on the DO PASS motion and FAILED with 8 voting aye, and 9 voting nay.

Rep. Mercer made a motion to TABLE HB 98, motion seconded by Rep. Strizich. A Roll Call Vote was taken and CARRIED with 13 voting aye, and 4 voting nay.

DISPOSITION OF HOUSE BILL 178

Motion: A DO PASS motion was made by Rep. Brooke, seconded by Rep. Darko.

Discussion: None.

Amendments, Discussion, and Votes: Rep. Darko moved to amend page 2, line 16, delete section B. Page 2, line 22, delete the language after "privilege". Motion seconded by Rep. Nelson.

Rep. Brown stated that if he remembers correctly, the child abuse government funds are in jeopardy if the bill is left as it currently is.

Rep. Darko offered an additional amendment to page 2, line 13, strike sub-a in parentheses.

Rep. Stickney stated that it appears to her that this amendment

effectively takes out the reason for the bill. She thought they were specifically trying to enable a professional to follow-up on an obvious knowledge that a child was being abused.

Rep. Brown commented that as he remembers the addition of the word made on the first page adds substantially to clarify for the folks working in the area when they should report and when they should not. That, in and of itself added substantially to clarifying their position under the law.

Rep. Eudaily stated that he doesn't understand why there wouldn't have been a simpler way to amend that under section B on page 2. If they had substituted health care provider for the name physician then that would have covered everyone. It seems what they are trying to cover is the mental health profession. Additionally, he expressed concern that adopting the second part of the amendment would make it easier to accuse someone unjustly by loosening up that language.

Rep. Mercer stated that he understood what the amendment was proposing to do because right now they say a professional must report. That is one law. The existing law in sub 4 seems to suggest that they can refuse to report on the grounds of a physician/patient privilege unless they happen to be treating the child. There is a conflict within our law right there. The amendment is very appropriate to accomplish what they want; therefore, they should do it for purposes of putting the bill in the form that it is intended to be.

Rep. Hannah asked Rep. Mercer to explain to him why it is a different issue. Rep. Mercer commented that if the amendment is not put into the bill, then the bill is not really doing what it is trying to do. It should be voted on up or down based on what the bill is trying to accomplish. Without this amendment it jeopardizes their money. It is confusing, however, because they still have that conflict in there and they should put the bill in the form that the people have intended it to be put in. Then they should vote on it up or down.

A vote was taken on the amendments and CARRIED unanimously.

Rep. Brooke commented that she has an additional amendment dealing with grammatical correctness. On line 14, page 1 following "child", insert a comma. Page 1 following "capacity", insert a comma. Motion seconded by Rep. Strizich.

Recommendation and Vote: Rep. Brown stated that the Committee will HOLD any further action on HB 178, although action taken at this point will stay as is.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 24, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

and CARRIED unanimously.

DISPOSITION OF HOUSE BILL 178

Motion: A DO PASS motion was made by Rep. Brooke, motion seconded by Rep. Darko.

Discussion: Rep. Brown reviewed amendments that were proposed by himself, Rep. Addy and Rep. Mercer. See attached standing committee report.

Amendments, Discussion, and Votes: Rep. Addy moved the amendments, motion seconded by Rep. Knapp. Motion on the amendments CARRIED.

Recommendation and Vote: Rep. Addy motioned HB 178 DO PASS AS AMENDED, motion seconded by Rep. Darko. A vote was taken and PASSED unanimously.

DISPOSITION OF HOUSE BILL 122

Motion: Rep. Brooke moved DO PASS, motion seconded by Rep. Wyatt.

Discussion: John MacMaster read to the Committee the intent of the proposed amendments. Line 21, following "shall", insert also and following "give", insert , prior to the third publication of notice in a newspaper,. Line 22, insert by mail or other means. Line 25, following "(1)", insert or be forever barred. Proof of notice shall be filed with the clerk.

Amendments, Discussion, and Votes: Rep. Addy moved the above proposed amendments (see attached standing committee report), motion seconded by Rep. Brooke. A vote was taken and all were in FAVOR of the amendments.

Rep. Mercer stated that the thing that bothers him is that a person is required to give actual notice to the creditors when they present a probate to the court, and how does the judge know who the creditors are and whether they are known or reasonably ascertainable. What does actual notice mean? Rep. Mercer commented that his inclination is that they would be better off not doing this at all and just leaving the statute the way it is now.

Rep. Addy stated that what they are doing is barring the claims creditors at the end of a 4 month period. First, certified mail isn't any big deal. For a few dollars they can certify their notice of need to file a creditors claim and when they sign for the letter, everything's covered.

Rep. Mercer commented that his point is that they are trying to clean everything up. He feels that Rep. Addy is inviting loose ends with a certified letter. There is no guarantee

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date JAN. 25, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH			X
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

January 25, 1989

Mr. Speaker: We, the committee on Judiciary report that HOUSE BILL 178 (first reading copy -- white) do pass as amended .

Signed: _____
Dave Brown, Chairman

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "MADE" on line 7 through "CAPACITY" on line 8

2. Page 1, line 14.
Following: "suspect"
Insert: ","
Strike: "that a child made known to them"
Insert: "as a result of information they receive"

3. Page 1, line 15.
Following: "capacity"
Insert: ", that a child"
Strike: "an"
Following: "neglected"
Insert: ","

4. Page 1, line 16.
Strike: "child,"

5. Page 2, line 13.
Strike: "(a)"

6. Page 2, lines 16 through 19.
Strike: subsection (b) in its entirety

7. Page 2, lines 22 through 24.
Strike: "if the" on line 22 through "child" on line 24

John Ortwein presented written testimony to the committee in opposition to the bill. (See Exhibit 4.)

Questions From Committee Members: There were none.

Closing by Sponsor: Representative Cody said she felt the bill would discourage and address sexual assault against children. She urged passage of the bill.

DISPOSITION OF HOUSE BILL 27

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Beck MOVED that House Bill 27 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 178

Presentation and Opening Statement by Sponsor:
Representative Dorothy Cody, Wolf Point, House District 20, said the bill includes mental health professionals on the list of all professionals who would be required to report suspected child abuse or neglect. It clears up the ambiguity pertaining to what health professionals could or could not do. She said a Supreme Court case of Gross versus Meyers indicated that there should be a broad interpretation of the statute and provide immunity for mental health professionals to report. Meyers was a counsellor who reported sexual abuse she learned about from a client and later was taken to court.

List of Testifying Proponents and What Group they Represent:

Steve Waldron, Executive Director of Mental Health Centers
John Madsen, Department of Family Services
Frank Lane, Community Health Center

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Steve Waldron said that mental health centers have found some ambiguities in present law making it unclear whether or not they were required to report sexual abuse. It was felt there was a confusion because of the patient privilege allowing confidentiality. "Reasonable cause to suspect" was also a problem for the mental health centers. He felt this bill would aid the professionals in their decisions to report these cases.

John Madsen presented written testimony in favor of the bill (Exhibit 5).

Frank Lane said that, if a therapist learned about sexual abuse of children during a session, he felt he couldn't report it. If it was reported, he would probably be sued; or, if he didn't, he could also be sued. He felt this bill would clean up the law. He said that sexual offenders have a severe personality disorder. The sooner they are removed from the public and get them treatment, the fewer sex offenses will take place against children. He urged passage.

Questions From Committee Members: Senator Jenkins asked if there might be hesitancy of a sex offender coming in for treatment because of this bill. Mr. Lane said that sex offenders do not come in for treatment of that problem. They probably come in for stress or depression, but the fact that they are sex offenders usually comes out in the course of treatment. He felt that would be no problem. He also felt that sex offenders should not be out-patients when receiving treatment.

Closing by Sponsor: Representative Cody closed the hearing

DISPOSITION OF HOUSE BILL 178

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that House Bill 178 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-1-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 1, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 178 (third reading copy - blue), respectfully report that HB 178 be concurred in.

Sponsor: Cody (Vaughn)

BE CONCURRED IN

Signed: _____
Bruce D. Crippen, Chairman

4:15
3:53
3:4 p.m.